Minneapolis Zoning Board of Adjustment Meeting September 27, 2012, Room 317 City Hall

Date of Z&P Meeting: November 8, 2012

ITEM SUMMARY

Description: Item #5, BZZ #5686

4053 11th Avenue South

Dustin Endres, on behalf of Endres Custom Homes, Inc., has applied for a variance to reduce the required side yard setback from one (1) foot to 9.6 inches to permit a detached garage accessory to a single family dwelling located at 4053 11th Avenue South in the R1A Single Family District.

Action: The Board of Adjustment adopted staff findings and **denied** the variance to reduce the south

interior side yard setback from one (1) foot to 9.6 inches to permit a detached garage accessory to a single family dwelling located at 4053 11th Avenue South in the R1A Single Family District.

Aye: Cahill, Ditzler, Finlayson, Meier, Nutt, Ogiba, Sandberg, Thompson

Motion Passed

TRANSCRIPTION

Chair Perry: This is 4053 11th Avenue South.

Steen: Board Chair and members of the board, item number 5 is a variance to reduce the required interior side yard setback for a detached accessory structure from one foot to .8 feet, or 9.6 inches, for the property located at 4053 11th Avenue South in the R1A Single Family District.

The subject property is 40 by 121 feet, which is slightly less than a standard lot in the R1A Single Family District. The property consists of a recently constructed two-story single family dwelling with a 20 by 22 detached garage, 20x22 feet detached garage, both constructed in spring of this year. And I should note that both of these structures have been constructed already. This is arising out of zoning enforcement, but as you know we would look at this as we do any other proposal preconstruction.

The garage construction was permitted at a minimum setback of one foot which is the minimum setback allowed under the ordinance for a detached accessory structure located at the rear 40 feet of the lot. However, after construction the inspector determined that the garage was in fact constructed at a distance of .8 feet to the property line, in violation of the ordinance. And the applicant is requesting a variance to reduce that south interior side yard setback to allow the existing structure to remain in that location.

Staff is recommending denial of the variance based on the findings number one and two of the three required findings required by the Minneapolis Zoning Code for a variance. And I will address those specific findings if it please the board.

Chair Perry: Yes.

Steen: The first finding staff does not find that there are circumstances unique to the property that contribute to a practical difficulty in complying with the location requirements for a detached garage. The applicant contends that

there is a difficulty that exists because the property line was difficult to locate due to a grade change at the rear of the lot. And while there may have been difficulties in measuring the location of the property line, staff believes that this is exactly the reason that we require a survey when a new single family home is constructed. I should also point out that the structure is set back from the north property line by 19.2 feet which provides ample room for alternative placement of the structure.

Speaking to the second finding, staff believes that the applicant's request to reduce the setback further is not unreasonable but it is not in keeping with the spirit and intent of the ordinance because it seeks to further decrease an already greatly reduced interior side yard setback. As you know, the purpose of yard requirements is to provide for orderly development of the use of land and to minimize conflicts in what land use is and accessory structures. And the detached garage is already subject to a decrease setback from the district setback of five feet to one foot, as long as it is in the rear 40 feet of the lot.

And the third finding, staff found that this was in favor of the applicant, so I won't address it at this time. So thus, based on the aforementioned findings, staff recommends that the Board of Adjustment deny the applicant's request to reduce the south interior side yard setback.

Chair Perry: Thank you, Mr. Steen, for that presentation. Are there questions of staff? Mr. Ditzler.

Ditzler: Thank you, Mr. Steen, for your presentation. I think you mentioned it once, but I just want to be clear since there is not a survey in our packet, there was not one done on the property ... are you aware of one?

Steen: Chair Perry, Board Member Ditzler, I do apologize, there was intended ... give me a moment. It should have been attachment #3 listed as the site plan. It did include, that was based off of a survey, copying it down to an 8.5 x 11 does make the quality of it a little bit difficult to tell.

Ditzler: Do you know which inspector or, I guess, at what point was the garage discovered to be out of code? Because according to the applicant's letter it looks like it was done, that they knew it when they poured the slab. Do you know which inspector caught it or what the timeline is here?

Steen: Chair Perry, Board Member Ditzler, I will let the applicant speak to the timeline a little bit more, but it is my understanding that this is a poured foundation. And it is my understanding that the building inspector stopped work after a complaint was made by the adjacent property. But if you will notice in the photos, the poured foundation seems to bow out a little bit. So it seems that maybe from the time that the framing was actually conducted to the time the concrete actually settled, there may have been a slight change in the location. But again, I will let the applicant speak to that.

Ditzler: Thank you.

Chair Perry: Any other questions of staff? Mr. Sandberg.

Sandberg: Yes, thanks Mr. Chair. Mr. Steen, are there any remedies available to the property owner similar to acquiring a sliver of the property, adjacent property, in order to make the structure conform?

Steen: In theory that may be possible. I do not have the exact dimension of the property to the south. Obviously we could not conduct a minor subdivision is the property to the south was substandard or only at the 40 feet width. However, I doubt in this situation that that would be possible.

Chair Perry: Any other questions of Mr. Steen? I just want to repeat something, when we have a situation like this, which we have had with this board, where something is built and then a variance is required. We have to look at it as if it has not been built. It hasn't happened yet, even though it is clearly sitting before us as happened. So if you can just keep that, if the board can keep that in mind as you are considering testimony. Mr. Nutt.

Nutt: Thank you, I have a question for staff. Just to be clear with all this information, what we are really talking about is the garage was intended to be built one foot off the property line. It turned out to be .8, which is basically 2.4 inches here. So we are talking about the garage was supposed to be built at one feet and in actuality it was built at .8 feet. And if this were a new plan before us, if someone was trying to come in and apply for 2 inches, we would simply tell him to scoot the garage over 2 inches. I'm having a hard time finding for the owner, because it seems pretty cut and dried.

Chair Perry: Well, let's hear from the applicant and from anybody else who will want to speak before we come to that conclusion. Ms. Thompson.

Thompson: Is there a margin of error to consider in the survey or is that considered pretty hard and dry?

Steen: The survey, we rely on the surveyors. As you know we put a lot of weight on the survey. We do require it to be a registered surveyor and a certified survey. So we did have an updated survey provided after the structure was built and this is what they provided. So, barring any industry standard, there is none that I would know of.

Thompson: Ok, thank you.

Chair Perry: You know, I would say also, Ms. Thompson, just as someone who has had my property surveyed. There is an extensive process that is not only looking at your property but different points throughout the block or even blocks if there are not the reference points remaining. So I think it is a pretty exact, as exact a science as it can be. Mr. Nutt.

Nutt: To back that up, when it is impossible to know exactly where things are at, surveys are thought of as the gospel, it is the one thing that is thought to be completely accurate. It is a massive process and a very formal process to get through.

Thompson: Thanks, that helps a lot.

Chair Perry: Is the applicant present? And by now, you know the routine. If you would give your name and address for the record.

Dustin Endres: Hi, I'm Dustin Endres. I am the builder of 4053 11th Avenue South. And if I can clarify the timeline, the foundation was inspected by the building official, or the building inspector, signed off on, it was poured, and then the zoning inspector came out and noticed that it was off from where they originally had it at. The form bowed out a little bit. There was a problem, we had some human error there, and that was our problem that we had here. Our intention was, of course, was to build it at one foot. And we needed to keep it over as far as we could so we could access the garage as best we could off of the driveway. And so, like I said, we had a little bit of human error in there where it came out to be a hair off. This is the house we built and so, I guess, to save your time so you guys can get out of here when you want, if I can start by answering your questions or comments rather than me just bloviate, to save your time.

Chair Perry: Mr. Endres, if you would, if you have some testimony that you would like to give to argue the case for the three findings that I'm sure, as a builder, you are familiar with, that's the best place to start. If we have questions around any of your testimony, I will certainly yield to the board members who have questions.

Dustin Endres: Well, like Jake said, you guys look at this as a pre-built scenario. Well, this is post-built and to make us move this garage, this brand new garage, would cost us about \$15,000 because we can't just scoot it over. We would have to demolish the garage and we would have to rebuild it. Here is the garage we are talking about, right here. So it is 2 inches, and it is all built to code, everything has been inspected. Drainage, zoning, building.

Chair Perry: Is there anything about the, maybe I can help you out, is there anything about the property or the access to the garage that would require it to be placed where it is, aside from the human error that you have noted.

Dustin Endres: Um, could you repeat yourself, please?

Chair Perry: I guess I'm saying, is there anything about the placement, where the garage is placed, that would require it to be placed there versus to what the code would allow. Either because there is something unique about the property or access to the garage, or something to that nature.

Dustin Endres: Right, this property accesses from 11th Avenue and not from an alley. There is a nine-foot retaining wall in the back of the alley so we had to access from the front so we try to keep it over as far as we can because it is a two-car wide garage and so we have a 10-feet wide driveway so we needed to be able to snake a car into that left stall easily. So that's why we kept it at the minimum. Had we known Minneapolis was very stringent on their setbacks, we would have went to one foot two. It's not like we intentionally tried to do this. So we had every best intention to build this within the allowed setbacks. It was inspected by the inspector, signed off, it was poured, the form bowed out, and here we are.

Chair Perry: So, just to be clear, what I think I heard you just said is if you'd had your druthers, you might even move it farther away from the property line?

Dustin Endres: If we had known you guys were so stringent on the one foot and nothing else, not a sixteenth, not an eighth, we would have just put it at one foot two. But we didn't know that Minneapolis was, because we are typically building out in the suburbs where everything is going by foundations and 5 foot, 5 foot one, it's ok, you know. But obviously Minneapolis has a lot more stringent codes. You know this is the sixth house we've built here. We've dumped over \$50,000 in permit fees alone. God knows how much in property taxes for all the homeowners that we have built homes for in Minneapolis. So this would cost us about \$15,000 to replace this, and the house that was on my phone, that's the house we demolished to build this house. So we took a \$17,000 house, demolished it, and built a \$250,000 property. So, we're improving your city and to deny us this variance would be a detriment to our company and we would just never build here again. It would be pointless. Because we had every intention of doing this properly.

Chair Perry: Ok. Well thank you for those comments. I understand your position, and I think the board hears that loud and clear as well. Are there questions for Mr. Endres? Mr. Cahill.

Cahill: Thank you, Mr. Chair. Mr. Endres, briefly, I know you said kind of two different things, that this was a result of human error and the form bowing out.

Dustin Endres: Correct.

Cahill: What happened?

Dustin Endres: That would be that the human error would just be that my concrete subcontractor did not brace the form well enough.

Cahill: Ok, gotcha.

Chair Perry: Mr. Ditzler?

Ditzler: When did zoning come out?

Dustin Endres: They came out for a final inspection, or before a final inspection.

Ditzler: So it was at the end after you guys were built and then they came out.

Dustin Endres: Correct.

Ditzler: Thank you.

Chair Perry: Any other questions for the applicant? Mr. Nutt.

Nutt: Thank you, Chair Perry. When you say the form bowed, did it bow all the way across or did it bow at the middle. And where I'm going with this, is this something you could simply take a concrete saw, knock the two inches off, and ...

Dustin Endres: No, it seems to be that because the corners are off a little bit too, so what it seems to be is that when they poured it they were pouring a taller sidewall than normal and they didn't brace it well enough so it seems that the corners as well as the middle pushed out a little bit. So our corners are at .08 as well.

Nutt: So you built a stud up to the edge of the slab?

Dustin Endres: Yeah, because that's what it was set at, correct. So the garage is set flush with the concrete at the corners and then the forms bow out a little bit at the middle. And then the shortest distance was taken at that bowed out area.

Nutt: Thank you.

Chair Perry: Ms. Thompson.

Thompson: I want to follow up on Chair Perry's questions. I am, we have to make our decision based on our findings, and even though it is only two inches and it seems like oh it is just two inches, we have to make based on the findings and I'm interested in exploring the finding about practical difficulties. Could you elaborate on the site, is there anything about this particular site that would have created a practical difficulty for you in locating the garage any farther away from the property line? Is there anything about that site that was unique to it, that would have forced you to push it those two inches closer to the property line.

Dustin Endres: Well, the pin for the property corner is 9 feet below where the garage sits, and then also 8 feet to the east of there as well. So, it was apparently difficult for my concrete contractor to locate that, plumb it up, and then get the line straight. But, with that being said, the inspector did approve this as it sat and where it was, so ...

Thompson: Alright, thank you.

Chair Perry: Are there any other questions?

Dustin Endres: And if I could reiterate, to have us move this, because it is the only option available if you vote that way, would be that we would have to demolish the garage because we would have to repour the slab. We would have to demolish the slab and take it out and then move it out, which would be injurious to our homeowner and it could be injurious to others as well because we are creating havoc to remove a brand new garage. So I'd like to hear some comments about what you all think, I suppose.

Chair Perry: Well, I will take further testimony and then when we close the public hearing I think you will hear our comments. But I will say this, that economic considerations are not those that we can take into account. That's the way the ordinance is written and that comes from the State of Minnesota.

Dustin Endres: Yes, I understand that.

Chair Perry: Any other questions of Mr. Endres? I see none, thanks for your testimony, I appreciate that. Is there anyone else who would like to speak in favor of this application? Is there anyone who would like to speak against it? Yes, ma'am, if you could give your name and address for the record.

Christina Banks: My names is Christina Banks and my address is 4057 11th Avenue. I'm the homeowner to the south.

Chair Perry: I'm sorry, your last name again, please?

Christina Banks: Banks, b-a-n-k-s.

Chair Perry: Thank you.

Christina Banks: I have a statement I'd like to read just because I feel more comfortable doing that, but I can, can I add some information about the property stakes here that just came up in discussion?

Chair Perry: Any information that can help us make a good decision is information welcome.

Christina Banks: Ok, the survey that Mr. Endres had done had property stakes at the top of the retaining wall. There was one at the back of the property and then further forward. And the stake he was referring to down in the alley was done on the second survey that I had done. And both surveys agreed where the property line was.

Chair Perry: Oh, so you had a survey done as well?

Christina Banks: I did. Because we are the property most affected by this and we are actually suing Mr. Endres for

Chair Perry: We don't really need to hear that part.

Christina Banks: I know, I just kind of wanted to disclose that.

Chair Perry: That's not a factor in our decision nor do I want to hear anything about that please.

Christina Banks: That's fine.

Chair Perry: If you have a statement, is it terribly long?

Christina Banks: Not horribly long.

Dustin Endres: Is it relevant?

Chair Perry: Mr. Endres, I'm running this meeting and I expect everybody to acknowledge that and respect the decorum of the Chair and these proceedings.

Dustin Endres: Correct.

Chair Perry: And I do not expect any more comments from you unless I ask you for those comments. Is that understood? Please proceed.

Christina Banks: Ok, we agree with the staff report on the first two points so I won't address them. I will address the third point, we believe that the driveway, well, I guess I do need to go back, I'm very sorry.

Chair Perry: If you want to read your statement, please go ahead and read your statement.

Christina Banks: Ok. As the staff report found, there are no unique circumstances causing practical difficulties in complying with the ordinance. That indeed all circumstances were created by the applicant. When Mr. Endres bought the foreclosed property in February he had a survey performed and accurate property stakes were present throughout construction. It was his decision to relocate the previously existing gravel driveway further south and build the garage so that it lay as close to the property line as possible. Since there is over 19 feet on the other side, the garage could easily have been built there. We agree also with the staff report that this request is not in keeping with the spirit and intent of the ordinance requiring a one foot setback. That is already a reduction in the standard

five feet and it should not be reduced any further than that. We believe regarding the third point that the converges of numerous moisture causing conditions caused by the construction which is injurious to the cause and enjoyment of our property and that the staff may not be aware of the conditions that we are dealing with. So I will here go into a little bit of detail. Our lot is 34.7 feet wide, as compared to the 40 feet standard, which is the house next door. Our back door is located on the north side of the house and has a sidewalk. We are less than 3.5 feet at the widest at the property line and less than 3 feet at the closest point. So with the construction of the garage and the driveway, we've had to deal with moisture problems that we didn't have to deal with previously. We had to run a humidifier in the basement all during the summer to reduce the moisture. We had to put in gutters in the north side of our house, which we hadn't previously had to do. So we think that in the spring runoff season it is only going to be worse. The moisture that we are dealing with. The current location, the garage's foundation reduces the required setback buffer of permeable surface even further and only adds to the effect of runoff. So it may not be more than a couple of inches, but even that couple of inches is significant to us right now. I'll just let the rest of it go, because I know you are busy, but Minneapolis wrote the ordinances the way there were for good reason. It is important to maintain some buffer zone between properties and it is just really important that that be respected and maintained in the long term.

Chair Perry: Thank you for your testimony, Ms. Banks. I want to point out something, as I'm sure that staff has told you, for a detached garage in the rear 40 feet, the setback requirement is not five feet, it is only 8 feet.

Christina Banks: No, I know that it's one foot in this circumstance. But I'm saying it shouldn't be less than one foot. Because even one foot is pretty minimal.

Chair Perry: Thanks for your testimony. Is there anyone else here to speak against this item?

Dustin Endres: Can I clarify myself here?

Chair Perry: No sir, I gave you an opportunity to provide testimony. I said at the beginning of this hearing how the proceedings would run and you've given your testimony so I'm not going to permit you to speak again. Is there anyone else who would like to speak against this item? I see no one, let's close the public hearing ... board comment. Mr. Nutt.

Nutt: Thank you, I'll keep this brief. I don't believe that there is a malfeasance. I don't believe that the garage was intentionally built too close, and I understand that there is nothing more frustrating than to have an inspector come out and inspect something and have him go back on it, but it happens all the time. I've had it happen to me three times this week. Having said that, it was stated that the stakes were hard to measure. The zoning guy can measure it. We've had two surveys done, they can measure it. But I have a hard time putting credence to that because it wasn't because it wasn't staked properly, it was stated that the concrete form bowed and they continued construction. So the not being hard to measure and the uniqueness of the site, I have a hard time putting credence to that based on the testimony. And it is also safe to say we are very stringent. He said a 16th of an inch to a quarter inch. But we're not talking about 16th of an inch or a quarter inch, we're talking about two and a half inches. Quarter inch, half inch, that's within construction tolerances. Two and a half inches is not. And to say that we don't do this based on finances, it is, basically we don't make our entire decision based on it. There are more options than tearing the whole thing down, you can take the one wall back two inches. It's not pretty, it won't make an absolutely perfect corner, but it can be done. So having said that, I'm very much leaning to agree with staff recommendation.

Chair Perry: Thank you for your comments, Mr. Nutt. Mr. Ditzler.

Ditzler: I kind of look at this one the same way as Mr. Nutt. It is kind of the item with no winners in it because I think .. .it is kind of interesting the back of the lot, the topography is such, and the reason why I noticed it is because it is similar to my lot in Minneapolis where the back of the lot falls off so steeply to the alley that, I don't know with the original garage if there was one, but sometimes they would build the garage into the lot and then you would have stairs that go up, which I do, which is completely not ideal. So I can probably understand and I wish that the owner of the house were here, but that's probably why he or she or they chose to build it this way. Because there is issues with construction, excavation, and then keeping water out of there, and then hauling your groceries up five or six stairs in addition to walking into the house. So I can see why they did that, but I think by the applicant's honest

testimony, which I give him credit for, I think this is an issue with his sub. I think that they built some houses here but maybe their sub has not. And because of the topography of the lot this is not a 3 inch or a five inch slab, it ended up being deeper than that to compensate for that, which means you gotta brace that form more, and he didn't do it or she didn't do it, and they poured the concrete in and it busted out. And that stinks, all the way around. But when we've had issues like this before the problem is that because it is new construction, I just have a hard time contradicting staff's findings. I just can't see it or have not heard the testimony for it.

Chair Perry: Thanks for those comments, Mr. Ditzler. Other comments? Mr. Sandberg.

Sandberg: Yes, thanks. We have a fairly narrow scope of how we can make this decision and unfortunately we can't do it on what makes sense in terms of utilizing resources or preventing disruption for anybody. And those findings that staff came up with are unfortunately not enough to justify a new construction being located off of the zoning requirements and so unfortunately I think we need to support the staff findings that indicate that the variance application would be denied.

Chair Perry: Thanks for those comments, any others? Mr. Ogiba.

Ogiba: Thank you Mr. Chair, I'd like to enter a motion to move staff findings and deny the variance as applied for.

Nutt: Second.

Chair Perry: Mr. Ogiba made that motion, and Mr. Nutt seconded it. Any further discussion? Will the clerk please call the roll?

Roll Call

Aye: Cahill, Ditzler, Finlayson, Meier, Nutt, Ogiba, Sandberg, Thompson Motion Passed